



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/163178

PRELIMINARY RECITALS

Pursuant to a petition filed January 12, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Walworth County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on February 19, 2015, at Jefferson, Wisconsin.

The issues for determination are whether Petitioner's appeal is timely as to a notice of FoodShare overissuance and whether Department may intercept the Petitioner's tax refund to collect an overissuance of FoodShare benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Dianna Wojcik

Walworth County Department of Human Services
W4051 County Rd NN
Elkhorn, WI 53121-1006

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Jefferson County.

2. Petitioner filed this appeal to contest an October 2013 notice of FoodShare overissuance and a December 2014 tax intercept notice.
3. Petitioner was sent a Notification of FoodShare Overissuance dated October 17, 2013. The notice informed Petitioner that her FoodShare household that had been overissued FoodShare benefits in the amount of \$2401.00 for the period from April 1, 2013 to October 31, 2013. The notice was sent to the correct address at the time and Petitioner acknowledges receipt of it.
4. Petitioner was sent a tax intercept notice dated December 12, 2014 that informed Petitioner that her taxes were subject to intercept to repay a public assistance debt of \$1960.00.
5. The overpayment involved here came about because a non-client error. The case was pended in February 2013 for verification of wages from new employment. The agency did not receive that verification but the case remained open to the end of October when the agency closed the case for lack of the verification. The agency contends that the case should have closed as of April 2013 as earned income of a household member was not reported.
6. Petitioner is the primary person for this FoodShare overpayment and resides with her children and significant other – [REDACTED]. Both she and [REDACTED] have received identical overpayment notices but are assigned separate appeals by the Division of Hearings and Appeals. His case is # 163177 and is the subject of a separate though virtually identical decision.
7. Payments have been made on the overpayment mostly, if not exclusively, via recoupment from a monthly FoodShare allotment but 3 payments were missed.
8. This appeal was filed on January 12, 2015.

DISCUSSION

At the outset it should be noted that all adult members of a household are jointly and severally liable for FoodShare overissuances. An adult is defined as anyone age 18 and over. *FSH*, §7.3.1.2. This explains why Petitioner and [REDACTED] both received overpayment notices.

The Division of Hearings and Appeals can only make a decision on the merits of a matter if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action concerning FS must be filed within 90 days of the date of that action. 7 *CFR*, §273.15(g). Petitioner's January 12, 2015 appeal was filed about 15 months after the October 2013 overpayment notice. Thus this appeal is untimely as to that overpayment notice.

Thus appeal is, however, timely as to the tax intercept. *Wis. Stats.*, §990.001(4). It affords Petitioner little help here; however, as the appeal of a tax intercept cannot address issues for which there was a prior right to a hearing. *Wis. Stats.*, §49.85(4). As there was a prior right to a hearing for this overpayment this appeal of a tax intercept cannot address the overpayment. The Department may use the tax intercept where three payments on an overpayment are missed. *FSH*, §7.3.2.10. Thus the Department may proceed with this tax intercept.

Despite the limits on Division of Hearings and Appeals authority in this case, I do question its calculation of the overpayment. I do not believe that concluding that the entire FoodShare issuance during the time here where the agency did not close the case can be the amount of the overpayment; rather, the agency should use actual income to determine what eligibility the household had and, if eligible, what allotment it should have received. There are currently two Division of Hearings and Appeals decisions pending with the Secretary of the Department of Health services on this point. The following is the Discussion from one of those:

MiLES contends that state policy is not to use the quarterly wages for petitioner's FS household as reported by the employer to the state. MiLES contends that, instead, policy requires it to find that petitioner was completely ineligible for FS during the time period in question.

First, there is no such explicit written policy. No written policy requires MiLES to find that petitioner was completely ineligible for FS.

Second, there is a written policy which states: ***Do not use IEVS in calculations for overpayments.*** (bold and italics in original) *FoodShare Wisconsin Handbook* ["FWH"] 1.2.6.1; and, "Note: IEVS may indicate that income was earned from an employer sometime during three months of the work quarter. Do not use IEVS in calculations and overpayments." (bold and CAPITALS in original) FWH 7.3.2.1. [footnote defining IEVS omitted] This policy conflicts with federal law. Federal law requires that an overpayment be calculated by determining the correct amount a household was entitled to receive (using income that then household failed to report) and then subtracting this from the amount it actually received. 7 C.F.R. §§ 273.18(c)(1)(ii)(A), (B) & (C) (2015). Policy cannot be followed if it conflicts with federal law. Further, policy itself requires that income "reported or required to be reported for each month of the overissuance period" be used when calculating the amount of an FS overpayment. FWH 7.3.2.1.

Finally, it is noted that another *Proposed Decision* which reaches the same conclusion as this Proposed Decision is currently pending before the Secretary of the Wisconsin Department of Health Services ["DHS"]. See, DHA Case No. FOP/162449 (Wis. Div. Hearings & Appeals Proposed Decision January 20, 2015) (DHS).

Whenever a Decision holds that a manual or handbook provision, contract provision, state plan provision, numbered memo administrative directive, or other official document is invalid or limited under a statute, administrative rule, or federal regulation it must be issued as a *Proposed Decision*. Wis. Admin. Code § HA 3.09(9)(b)1. (September 2001). Therefore, this Decision is being issued as a *Proposed Decision*. The DHS Secretary will make the Final Decision in this matter.

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The agency should track these Decisions and if adopted as 'Final' by the Department, it should ask the Department as to it should affect the calculations here.

CONCLUSIONS OF LAW

That this appeal is untimely as to the October 2013 overpayment determination and that, having had the prior right to a hearing, there is no issue that can be resolved as to the tax intercept.

THEREFORE, it is

ORDERED

That this matter is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and

why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 11th day of March, 2015

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 11, 2015.

Walworth County Department of Human Services
Public Assistance Collection Unit